

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

August 27, 2010

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on August 27, 2010.

Members present were Chairman Peter Brown, Louis Stout, James Griggs, Kathryn Moore and Noel White. Members Barry Stumbo and Jan Meyer were absent. Others present were Jim Hume, George Dillon and Mark Newberg of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx, Barbara Rackers and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the March 26, 2010 meeting would be considered at this time.

Action – A motion was made by Mr. Stout, seconded by Mr. Griggs and carried unanimously (Meyer & Stumbo absent) to approve the minutes of the March 26, 2010 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Chairman Brown asked all those that wished to testify today to stand at this time and be sworn. Several in attendance did so, as the Chair administered the oath.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2010-66: VINEYARD COMMUNITY CHURCH** - appeals for a conditional use permit to occupy an existing building (former school) as a church in a Single Family Residential (R-1C) zone, on property located at 350 Henry Clay Boulevard (Council District 5).

The Staff Recommended: Approval of phase one and phase two, for the following reasons:

- a. A church at this location should not adversely affect any of the surrounding properties, and, with appropriate conditions, church activities can be managed to be compatible with the surrounding neighborhood. An existing building of historic significance will be preserved and used, without the need for any building expansion or major exterior renovations. Adequate off-street parking will be provided as the church membership expands, with significantly more spaces to be provided (one space for every three sanctuary seats) than is minimally required by the Zoning Ordinance (one space for every five sanctuary seats). On-street parking is available within a reasonable walking distance of the church, and will be actively managed by the church to ensure that disruptions to nearby residents are minimized. Significant areas of open space will be preserved, which will help to maintain the historical character of the former school property.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church shall be established in accordance with the submitted application, and phase one and phase two of the revised 3-phase site plan submitted on August 17, 2010. Sanctuary size and the timing of parking lot improvements shall be governed as follows: Phase one (initial occupancy) – sanctuary seating for up to 357 persons and 119 off-street parking spaces to be provided; phase two – sanctuary seating for up to 384 persons and 128 off-street parking spaces to be provided. With regard to the number of off-street parking spaces, minor reductions based on a final design review of each phase by the Division of Traffic Engineering are acceptable, but

- will require that sanctuary size limits be adjusted downward so that an off-street parking ratio of one space for every three sanctuary seats is maintained. Occupancy permits issued by the Division of Building Inspection shall specify sanctuary seating limits accordingly.
2. All necessary permits shall be obtained from the Division of Building Inspection for each phase of activity, prior to any parking lot renovation or construction, prior to undertaking any exterior or interior building renovations, and prior to occupancy of the building for church purposes.
  3. The final design of the parking lot restriping and related modifications associated with each phase shall be subject to review and approval by the Division of Traffic Engineering, with the understanding that their review may result in the loss of a few parking spaces, as well as a reorientation of the angled parking spaces that are proposed in the circle drive during phase two.
  4. On-street parking shall be actively managed by the church to ensure that residential driveways are not blocked and that other potential disruptions to residential properties are minimized.
  5. In order to mitigate possible problems with an "overlap" in parking needs, Sunday morning services shall be staggered to provide a separation of at least two hours (e.g., 9:30 AM and 11:30 AM services).
  6. Any new outdoor pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent any disturbances to adjoining or nearby residents.
  7. The building shall not be occupied for any permanent residential use, and temporary overnight stays related to church-oriented activities shall be limited to no more than six nights per year.
  8. The church shall not provide, as routine ministries, overnight shelter or food services for the homeless or hungry at the subject property, but is encouraged to continue to support such ministries at other established locations that provide those needed services. Support activities relating to administration/coordination of work efforts may take place on site.
  9. Special events shall be limited to no more than four per year, which will allow, on the average, one special event per season.
  10. Outdoor activities, including special events, shall not be undertaken that involve the placement of portable toilets on the subject property or the use of fireworks.
  11. All outdoor activities shall end by 9:00 PM, and no outdoor speakers or amplification systems are allowed, unless the activity is jointly sponsored by the church and the Fairway Neighborhood Association.
  12. All trees with a caliper of 8" or greater shall be preserved, unless determined by the Urban County Forester to be diseased or a health or safety risk.
  13. The property or any portion of the existing building shall not be leased to a third party.

Mr. Marx stated that this item had been withdrawn, as the staff had received a letter from the appellant's attorney, Mr. Simpson. Chairman Brown said that he wouldn't have believed it, were it coming from anyone other than Mr. Marx.

- b. **A-2010-82: KEVIN COMPTON** - appeals for an administrative review to determine that a packaging microbrewery should be allowed as a principal permitted use in the Agricultural (A-R, A-B, A-N and A-U) zones within Fayette County.

The Division of Building Inspection will report at the public hearing.

Mr. Marx stated that Kevin Compton had submitted a letter of withdrawal to the staff for this appeal. Mr. Compton indicated that he would soon be requesting a text amendment to the Zoning Ordinance to permit this type of use.

- c. **V-2010-71: JAMES BAILEY** - appeals for variances to: 1) reduce the required parking from 4 to 2 spaces; 2) reduce the required side yard from 6 feet to 3 feet; and 3) to reduce the required front yard from 30 feet to 0 feet to construct a 2-story duplex and off-street parking in a Two Family Residential (R-2) zone, on property located at 329 Hickory Street (Council District 2).

The Staff Recommended: Approval of a side yard variance, from 6' to 3', along the westerly side property line, for the following reasons:

- a. Granting such a variance will allow a new building to be constructed that closely duplicates the location of the existing dwelling on the subject property. As such, there should not be any adverse impact to the public health, safety or welfare, and no alteration to the established character of the general vicinity.

- b. The narrow width of the lot (33') and the location of the existing residence on the lot are special circumstances that contribute to justifying some reduction in the required side yard at this location.
- c. Strict application of the Zoning Ordinance would be unreasonably restrictive, given the narrow width of the lot and the historical use of the property with a nonconforming side yard along the westerly side property line.
- d. The appellant is making a reasonable effort to redevelop the subject property, with no evidence of any intent to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- 1. Any new building shall be constructed in accordance with a revised site plan indicating compliance with all other yard requirements as well as off-street parking requirements.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

The Staff Recommended: Disapproval of the remaining variance requests, for the following reasons:

- a. Granting the remaining variances that have been requested will significantly alter the established character of this older neighborhood and will contribute to congested on-street parking conditions on Hickory Street. Paved parking areas in the front yards of residences is atypical of properties in the general vicinity, and the demand for on-street parking is already high due to the prevalence of residences that have no off-street parking.
  - b. There are no special circumstances pertaining to the subject property or the general vicinity that support a reduction in required off-street parking, concurrent with a reduction in the required front yard all the way to 0' from the right-of-way. To the contrary, the existing neighborhood circumstances relating to the location of off-street parking areas and on-street parking conditions support that the current Zoning Ordinance requirements should be maintained.
  - c. Strict application of the Zoning Ordinance will not unreasonably restrict use of the subject property or create an unnecessary hardship for the appellant. The lot can be redeveloped with a single family residential use or possibly a more compatible duplex, which is typical of this neighborhood.
- d. **V-2010-72: JAMES BAILEY** - appeals for variances to: 1) reduce the required parking from 4 to 2 spaces; and 2) reduce the required front yard from 30 feet to 0 feet for off-street parking to construct a 2-story duplex in a Two Family Residential (R-2) zone, on property located at 732 Whitney Avenue (Council District 2).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the extent of the requested variances will significantly degrade the established character of this older neighborhood and will contribute to congested on-street parking conditions on Whitney Avenue. Paved parking areas in the front yards of residences is atypical of properties in the general vicinity, and the demand for on-street parking is already high due to the prevalence of residences that have no off-street parking.
- b. There are no special circumstances pertaining to the subject property or the general vicinity that support a reduction in required off-street parking, concurrent with a reduction in the required front yard all the way to 0'. To the contrary, the existing neighborhood circumstances relating to the location of off-street parking areas and on-street parking demands support that the current Zoning Ordinance requirements should be maintained.
- c. Strict application of the Zoning Ordinance will not unreasonably restrict use of the subject property or create an unnecessary hardship for the appellant. The lot is currently vacant, and a single family residential use could easily be reestablished, or a smaller duplex could be constructed on the property, without the need for any variances.

Mr. Marx stated that he had been in touch with Mr. Morton about these two cases: V-2010-71 & V-2010-72. Mr. Morton told him that he would like both cases postponed until the Board's September meeting.

Action - A motion was made by Mr. Stout, seconded by Ms. Moore, and carried unanimously (Meyer & Stumbo absent) to postpone **V-2010-71: JAMES BAILEY** and **V-2010-72: JAMES BAILEY** to the Board's September meeting.

- 2. No Discussion Items - The Chair asked if there are any other agenda items where no discussion is needed...that is, (a) The staff had recommended approval of the appeal and related plan(s), (b) The

appellant concurred with the staff's recommendations. Appellant waived oral presentation, but may submit written evidence for the record, (c) No one present objected to the Board acting on the matter at this time without further discussion. For any such item, the Board would proceed to take action.

- a. **V-2010-80: JOHN DEHART (dba THOUGHT SPACE)** - appeals for a variance to reduce the required side street side yard along Richmond Avenue from 6'4" to 3'4" in order to construct a second-story addition with support columns and roof overhang in a Planned Neighborhood Residential (R-3) zone, on property located at 1017 Richmond Road (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor degrade the character of the general vicinity, as the structures requiring a variance are limited to the roof projections and support columns for the proposed addition. The primary side wall of the residence will be unchanged, and the new roof and support columns will not be any closer to Richmond Avenue than an existing entry projection.
- b. The location and alignment of the existing residence, and limited scope of the additions that require a variance, are special circumstances that contribute to justifying a reduction of the required side street side yard of this corner property.
- c. Strict application of the Zoning Ordinance would limit any structural aspect of the proposed additions to complying with a setback of 6'4" along Richmond Avenue, which is considered unreasonably restrictive based on the nature of the additions that are proposed.
- d. Given that the primary side wall of the residence will not be changed, this request is best viewed as a reasonable effort to increase the livability and architectural interest of an existing dwelling, with no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be undertaken in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. John Dehart, Thought Space Architects, was present for this appeal. Chairman Brown asked Mr. Dehart if his client had read the staff recommendation, and if his client would agree to abide by the two conditions recommended. Mr. Dehart replied in the affirmative.

Action – A motion was made by Mr. Stout, seconded by Ms. White, and carried unanimously (Meyer & Stumbo absent) to approve **V-2010-80: JOHN DEHART (dba THOUGHT SPACE)** – an appeal for a variance to reduce the required side street side yard along Richmond Avenue from 6'4" to 3'4" in order to construct a second-story addition with support columns and roof overhang in a Planned Neighborhood Residential (R-3) zone, on property located at 1017 Richmond Road, for the reasons provided by the staff, and subject to the two recommended conditions.

- b. **V-2010-81: GRIFFIN VANMETER** - appeals for variances to: 1) reduce the required side street side yard along Fairlawn Avenue from 30 feet to 10'9" and 2) reduce the required side yard from 8 feet to 3 feet, in order to construct a single-story addition and a detached garage in a Single Family Residential (R-1C) zone, on property located at 1201 N. Limestone (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed addition will be slightly further away from Fairlawn Avenue than the existing residence, and several residences along this block of North Limestone have side yards of less than 8'.
- b. The narrow width of this lot, at a corner location, is appropriately considered as a special circumstance that contributes to justifying the requested variances.
- c. Strict application of the Zoning Ordinance would result in just a 12' wide area available for an addition to the residence, which is considered overly restrictive under the circumstances.
- d. Given all of these circumstances, this request is best viewed as a reasonable attempt to make a modest property improvement, with no intent to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The addition and detached garage shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Griffin VanMeter was present for his appeal. Chairman Brown asked Mr. VanMeter if he understood the recommendation for approval and if he would agree with the four recommended conditions. Mr. VanMeter replied in the affirmative.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs and carried unanimously (Meyer & Stumbo absent) to approve **V-2010-81: GRIFFIN VANMETER** – an appeal for variances to: 1) reduce the required side street side yard along Fairlawn Avenue from 30 feet to 10'9" and 2) reduce the required side yard from 8 feet to 3 feet, in order to construct a single-story addition and a detached garage in a Single Family Residential (R-1C) zone, on property located at 1201 N. Limestone, for the reasons provided by the staff, and subject to the two conditions recommended by the staff.

- c. **C-2010-75: RFI PROPERTIES, LLC** - appeals for a conditional use permit to establish an indoor recreational facility (gymnastics and fitness center) in a Light Industrial (I-1) zone, on property located at 2560 Palumbo Drive (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking is conveniently available. The proposed facilities will use an existing building, with no new construction required. Surrounding land uses are predominately commercial in nature, and are not likely to be disturbed by activities at a gymnastics school and fitness center.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The facilities shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the facilities.
3. No more than 8 participants/students shall use the gymnastics facility at any given time.
4. No more than 24 participants/students shall use the fitness center at any given time.
5. The rear 9-space parking lot shall be used only by employees or for overflow parking when needed by participants and/or students.
6. Any door openings at the rear of the building shall remain closed when training or instructional activities are taking place.
7. The conditional use permit shall become null and void should the appellant cease to either own or lease the subject property.

Representation – Mr. Myke Robbins, Foster-Roland, Inc., was present for this application. Chairman Brown asked Mr. Robbins if the appellant understood the recommendation for approval and if they would abide by the seven recommended conditions. Mr. Robbins replied in the affirmative.

Action – A motion was made by Ms. White, seconded by Mr. Stout, and carried unanimously (Meyer & Stumbo absent) to approve **C-2010-75: RFI PROPERTIES, LLC** – an appeal for a conditional use permit to establish an indoor recreational facility (gymnastics and fitness center) in a Light Industrial (I-1) zone, on property located at 2560 Palumbo Drive for the reasons provided by the staff, and subject to the seven conditions recommended by the staff.

- d. **C-2010-77: CARL BOYD** - appeals for a conditional use permit to expand the operating hours of a previously approved child care facility in a Light Industrial (I-1) zone, on property located at 124 Trade Street (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. A child care center with extended hours of operation at this location should not adversely affect the subject or surrounding properties. The property is surrounded on three sides by commercial uses,

- and to the rear by a wide area of open space. Traffic flow to and from the site during day and nighttime hours will be facilitated by the signalized intersection at Trade Street and Leestown Road.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The child care center shall be established in accordance with the submitted application and site plan, with no more than 65 children to be cared for at any given time.
2. An amended occupancy permit shall be obtained from the Division of Building Inspection prior to operating the facility on a 24-hour per day basis.
3. The outdoor play area shall be fenced in accordance with the requirements of the Division of Building Inspection.
4. The child care center shall be operated at all times in compliance with the requirements of the Kentucky Cabinet for Health and Family Services, which may necessitate that fewer than 65 children be cared for at any given time.
5. Vehicles shall only park in designated spaces.

Representation – Mr. Carl Boyd was present, along with Ms. Rosanna Boyd, his wife, for this appeal. Chairman Brown asked Mr. Boyd if he had read and understood the recommendation for approval, and if he would agree with the five recommended conditions. Mr. Boyd replied in the affirmative.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout and carried unanimously (Meyer & Stumbo absent) to approve **C-2010-77: CARL BOYD** – an appeal for a conditional use permit to expand the operating hours of a previously approved child care facility in a Light Industrial (I-1) zone, on property located at 124 Trade Street for the reasons provided by the staff, and subject to the five conditions recommended by the staff.

- e. **A-2010-76: PEOPLES EXCHANGE BANK** - appeals for an administrative review to allow a previously existing non-conforming sign to be re-established in a Neighborhood Business (B-1) zone, on property located at 3101 Clays Mill Road (Council District 9).

The Staff Recommended: Approval, for the following reasons:

- a. A freestanding business sign was previously permitted at this location by the Division of Building Inspection.
- b. The issuance of a refacing permit by the Division of Building Inspection, for the previously existing freestanding sign, indicates that there was no intent on the part of the appellant to abandon signage at this location.
- c. The provisions of Article 17-7(f)(1)(b) of the Zoning Ordinance permit one freestanding sign per street frontage in the B-1 zone, and the proposed sign complies with the applicable size and height limits for a freestanding sign.
- d. The subject property has 200' of frontage on Wellington Way, with no existing freestanding signage associated with that street frontage.

This recommendation of approval is made subject to the following conditions:

1. The proposed freestanding sign shall be erected in accordance with the submitted application and site plan.
2. A sign permit shall be obtained from the Division of Building Inspection prior to erecting the sign.
3. No other freestanding signage can be permitted for the Wellington Way street frontage.

The Division of Building Inspection will report at the public hearing.

Representation – Ms. Gaye Gilpin, Integrated Signs, was present for this appeal. Chairman Brown asked if the appellant had read and understood the recommendation for approval and if they would agree with the three recommended conditions. Ms. Gilpin replied affirmatively.

Action – A motion was made by Mr. Stout, seconded by Ms. Moore and carried unanimously (Meyer & Stumbo absent) to approve **A-2010-76: PEOPLES EXCHANGE BANK** – an appeal for an administrative review to allow a previously existing non-conforming sign to be re-established in a Neighborhood Business (B-1) zone, on property located at 3101 Clays Mill Road for the reasons provided by the staff.

- B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board was entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-79: BROADWAY CHRISTIAN CHURCH** - appeals for a variance to reduce the required landscape buffer along Saunier Street from 5 feet to 0 feet in order to expand a parking lot and sidewalk in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street (Council District 2).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance would result in an unnecessary continuation of a nonconforming situation with regard to required landscaping, and would also result in no separation between pedestrian movement along the sidewalk and the existing parking lot, thereby adversely impacting the public health, safety and welfare.
- b. Special circumstances have not been identified by the appellant to warrant a total elimination of the required landscaping for a vehicular use area with 190' of frontage on Saunier Street. Concerns raised by the appellant regarding sight lines/visibility and traffic flow in the parking lot can easily be addressed with a proper design of the parking lot (when restriped) and associated landscape buffer. Additional landscaping proposed for the West Second Street frontage, while certainly beneficial and desirable, in no way substitutes for or mitigates the total absence of any landscaping along Saunier Street.
- c. Strict application of the Zoning Ordinance will require that a full landscape buffer be provided at this location, which is feasible given the 60' width of the parking lot. Any hardship associated with this requirement is due, to a significant degree, to the appellant's decision to pursue construction of an 8' wide sidewalk without the benefit of obtaining a permit from the Division of Building Inspection.

D. **Conditional Use Appeals**

1. **C-2009-9: BROADWAY CHRISTIAN CHURCH** - under consideration for revocation of a previously approved conditional use permit for expansion of a parking lot, for failure to comply with conditions specified by the Board, in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street (Council District 2).

The Board approved a conditional use permit for this church in April of 2009, subject to several conditions. One of those conditions was to provide a landscape buffer where the parking lot adjoins Saunier Street, which has not been done to date; and which is the subject of a related variance request, appearing earlier on this agenda. The Division of Building Inspection has requested that the Board consider revocation of the church's conditional use permit for failure to comply with conditions imposed at the time of approval.

Representation – Mr. Mike Bailey, a Trustee for Broadway Christian Church, was present for this appeal.

Chairman Brown asked Ms. Boland as to whether or not it mattered which of the two Broadway Christian Church appeals was considered first by the Board. Ms. Boland replied that she believed that the testimony from the Church would be, in essence, overlapping. For this reason, the Board might wish to hear all the evidence for both cases at once, but then vote on the two cases separately at the conclusion of all testimony, beginning with the requested variance.

Staff Presentations – Mr. Hume reported that as to **C-2009-9: BROADWAY CHRISTIAN CHURCH**, there were two conditions that have not been completed from the Board's approval of that case: 1) the church has not installed all of the off-street parking approved last year, and 2) the church has not yet installed the required landscaping for their parking lot.

Chairman Brown asked to hear from the planning staff, as to the requested variance: **V-2010-79: BROADWAY CHRISTIAN CHURCH**.

Mr. Marx circulated one letter of objection, which the staff received regarding this request, and displayed an aerial photograph of the subject property on the overhead projector. The required landscaping is along the 190' of frontage for the parking lot along Saunier Street, just southwest of West Second Street. Mr. Marx identified the sidewalk along Saunier Street shown in the photograph. He stated that its installation followed some underground utility work for the new school building farther down Saunier Street. After the utility work was done a couple of years ago, about two feet of grassed landscape area was removed, and Building Inspection informed the appellant that they would require Board of Adjustment approval for that change. When the church made application for that, they also requested permission to expand the parking lot by four spaces, closest to West Second Street.

At the Board's hearing last year, Mr. Marx said that the church withdrew their requested landscaping variance, and indicated that they would install the required buffer. He stated that, as the Board would hear at today's hearing, the church has changed their mind and decided once again to seek the landscape variance along Saunier Street. Mr. Marx stated that last year when the Landscape Review Committee reviewed this request, and that those members in attendance were not in favor of the elimination of the required landscaping between the parking lot and the Saunier Street sidewalk. They preferred the installation of the full landscape buffer, but did indicate that at least some "pockets" of landscaping be installed if the variance were approved.

Mr. Marx stated that the staff could not support the elimination of all of the required landscaping, especially given the recommendations of the Landscape Review Committee last year. He displayed a second photo on the overhead projector of the view down Saunier Street, showing a vehicular encroachment along the sidewalk. Mr. Marx stated that, in the staff's opinion, this was clearly a safety issue, meaning that there was a need to protect pedestrians on the sidewalk from the vehicles in the adjacent parking lot.

Questions – Mr. Stout asked what problem would result from the church moving the parking further from the sidewalk, and leaving a buffer next to the sidewalk. Mr. Stout did believe that the buffer was more important along Second Street, but that the parking is too close to Saunier Street.

Chairman Brown asked Mr. Hume if he had anything to add. Mr. Hume replied that the church did obtain their required permits, but they never did install the landscaping or any additional pavement.

Objector – Mr. Gay Reading was present to speak to this request, as he had done last year when the church originally applied for this parking lot expansion. Mr. Reading stated that he had worked previously with a member of the church, who has since died, and was making progress prior to his passing. He stated that he had been worried about this parking lot for the past 40 years, which is the entire time he has resided across the street on West Second Street.

Mr. Reading said that there is another solution for the church besides that now proposed. He suggested his concern is primarily for the portion of this parking lot along the very corner of Saunier and Second Streets. Mr. Reading said that a brick wall should be placed along this corner, and that planting a bush or two in front of the wall and two trees behind the wall should be done. This planting would require no maintenance, which should greatly benefit the church. Mr. Reading said that he is most



concerned that this property would not be maintained, and said that corners are important in urban areas. He felt that the new addition to St. Paul's School is a big improvement to the area, and that this lot is now even more visible than before. The wall, he believed, should be installed since it would not be a financial problem for the church. Mr. Reading also said that he believed that this wall would provide a structural screening for the parking lot, and would be cheaper than what the staff is requesting be done along Saunier Street.

Ms. Moore clarified that Mr. Reading was not the citizen that submitted the letter of objection to the Board.

Appellant's Presentation – Mr. Mike Bailey stated that half of those that use this lot are residents of West Second Street, and that he could provide documentation to that effect, if necessary. He also stated that the church does not object to "sprucing up" the view of this lot from West Second Street. He hopes to install a curb along Saunier Street, leave the existing trees and install some additional landscaping.

Mr. Bailey stated that there were some SUVs that parked in this lot. He said that the church's collections have declined recently, and that a bill has come due for a new \$250,000 boiler replacement for the church. Still, they do wish to upgrade the landscaping along Second Street. He thought that there would be a savings to the church of \$13,000 if they did not have to install landscaping along Saunier Street.

Mr. Bailey stated that many years ago a murder took place in this parking lot. If the required landscaping were installed, he did not feel he could keep track of the activities in their parking lot. That lot is more of a public parking lot than a church parking lot, due to the level of activities downtown. The church agrees with upgrading the Second Street end of the property, installing curb stops along Saunier Street, and moving forward with this parking lot.

Discussion – Mr. Stout asked if the church owns this lot, as Mr. Bailey mentioned that this is a "public" lot. Mr. Bailey stated that the public uses the lot, whether the church blocks its entrances with cones or not, and that he thought that "the zoning" might even require this.

Mr. Griggs asked whether the church could sign the lot so as to restrict public parking, and threaten to tow away violators. Mr. Bailey replied that that is a viable option, but that he had been told previously that the church was not allowed to do that.

Mr. Griggs stated that he was on the Landscape Review Committee when this was first proposed, and that he is aggravated that the church has not followed the recommendation of that committee, and installed a decent landscape buffer. Mr. Bailey replied that he is sorry for the aggravation, but that he is new to this project. He stated that he was not involved in the prior appeal.

Mr. Reading stated that they have maintained part of their parking lot very well over the years, but it was his hope that the screening along Second Street, as he described earlier, could still allow the church to monitor activity in their parking lot. He added that the workers for the St. Paul School addition were still parking in this lot, since that work is nearing completion. He also advised that the church does rent out the lot for downtown events, but during the day it is operated much like a commercial parking lot.

Chairman Brown asked, if there was no more discussion, for a motion on the requested landscape variance.

Action – A motion was made by Mr. Griggs, seconded by Ms. Moore to disapprove **V-2010-79: BROADWAY CHRISTIAN CHURCH** – an appeal for a variance to reduce the required landscape buffer along Saunier Street from 5 feet to 0 feet in order to expand a parking lot and sidewalk in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street, for the reasons provided by the staff.

The vote on the motion was as follows:

Ayes: Griggs, Moore, Stout, White

Nays: Brown

Absent: Meyer, Stumbo

The motion for disapproval passed 4-1.

Discussion (cont.) – Chairman Brown stated that the Board needed to turn its attention to the possible revocation of the conditional use permit. Ms. Boland advised that the only issue for the revocation of the conditional use permit was regarding the modest expansion of the parking lot by four spaces. Mr. Hume advised the Board that the four spaces have not been constructed. Mr. Marx also reminded the Board that the required landscape buffer was also a part of that appeal. Ms. Boland suggested that the landscaping could be dealt with as an enforcement matter. She also stated that the Board can consider the four parking space expansion, and that the provisions of Article 18 are still applicable. She said that those requirements can be dealt with by Building Inspection. She advised that no activity had commenced on that prior conditional use permit.

Mr. Stout asked for a clarification as to where the four parking spaces were proposed. Mr. Hume replied that the grassy area near West Second Street was the area proposed for the four spaces. Mr. Marx identified the four spaces as proposed on the site plan, which was displayed on the overhead projector.

Mr. Bailey stated that he was present because of the desire for the four additional spaces. He thought that if this lot “goes back to square one” then a five-foot buffer area would be provided along Saunier Street. He said that when they received a notice of this violation, then he became involved with assisting the church.

Mr. Griggs said that he thought that the proposed buffer was 3’ in width, based on the site plan. Mr. Marx replied that, although it is hard to read, the proposed buffer is to be 5’ in width. Chairman Brown thought that if the church was now going to install the buffer, perhaps this appeal should be continued to a later date.

Mr. Griggs stated that he was concerned that time was running out for installing this landscaping this year. Chairman Brown asked Mr. Bailey if the church could install the landscaping by the end of the year. Mr. Bailey replied in the affirmative.

Action – A motion was made by Mr. Stout, seconded by Mr. Griggs and carried unanimously (Meyer & Stumbo absent) to continue this revocation hearing for **C-2009-9: BROADWAY CHRISTIAN CHURCH** to the Board’s November meeting.

3. **V-2010-78: DEVIN ONSKT** - appeals for a variance to reduce the required side yard from 6 feet to 3’6” to enclose an existing covered deck in a Single Family Residential (R-1D) zone, on property located at 993 Wyndham Hills Drive (Council District 9).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. A covered porch has existed at this location for many years, and the enclosure of the sides to create a sunroom will not result in any expansion of the structure.
- b. The location of the existing residence 8’ from the side property line, and small offset provided by the existing porch, are special circumstances that contribute to justifying a minimal side yard reduction in an area where “averaging” the required side yard would allow all of the structure to be enclosed without the need for a variance.
- c. Strict application of the Zoning Ordinance would be unreasonable in this particular case, as it would result in unnecessarily restricting the use of an existing structure constructed many years ago by a previous property owner.
- d. The appellant is attempting to make a reasonable property improvement without expanding the footprint of the covered porch, which should not be construed as an effort to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The sunroom shall be constructed in accordance with the submitted application and site plan.

2. All necessary permits shall be obtained from the Division of Building Inspection prior to enclosing the covered porch.

Representation – No representative was present for this appeal.

Mr. Marx stated that he was not sure why the appellant was not present for this appeal. He stated that part of the wall was set back along the side of the property; and, if averaged, it would meet the provisions of the Zoning Ordinance for averaging.

Ms. Moore asked if the appellant could withdraw this request. Mr. Marx thought so, if Building Inspection could confirm that no variance was necessary for this construction. Mr. Hume confirmed that this would be the case.

Ms. Boland stated that the Board did not have findings for disapproval, and did not suggest that the Board take that action, recommending instead that the case be postponed with the likelihood of a future withdrawal.

Action – A motion was made by Ms. Moore, seconded by Ms. White and carried unanimously (Meyer & Stumbo absent) to postpone **V-2010-78: DEVIN ONSKT** – an appeal for a variance to reduce the required side yard from 6 feet to 3'6" to enclose an existing covered deck in a Single Family Residential (R-1D) zone, on property located at 993 Wyndham Hills Drive to the Board's September meeting.

E. **Administrative Reviews**

There were none remaining

- IV. **BOARD ITEMS** – Chairman Brown announced that any item a Board member wished to present would be heard at this time. There were none.
- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time. There were none.
- VI. **NEXT MEETING DATE** – Chairman Brown announced that the next meeting date would be September 24, 2010.
- VII. **ADJOURNMENT** – Since there was no further business, the Chair declared the meeting adjourned at 1:58 PM.

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Peter Brown, Chairman

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James Griggs, Secretary